***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

+W.P.No.6181 OF 1997

% 19-12-2006

Sri Kalika Devi Temple Bhajana Mandali, Tandur,
Rangal Reddy (District), rep. by its Secretary, Sri S.Ramdas.
.. Petitioner

And

$ The Commissioner of Endowments,
Government of A.P., Tilak Road, Adids,
Hyderabad, and others.
.. Respondents

! Counsel for petitioner : Sri N.Vasudeva Reddy

^ Counsel for respondents : Government Pleader for Endowments
Sri K.Durga Prasad
Sri K.Raghuveer Reddy
Sri S.Chandra Sekhar
Sri N.Siva Reddy

<GIST:

>HEAD NOTE:

?CASES REFERRED :

1. 1996(1) ALD 941
2. AIR 1986 SC 1158

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.6181 of 1997

DATED: 19.12.2006

Between:

Sri Kalika Devi Temple Bhajana Mandali, Tandur,
Ranga Reddy (District) rep.by its Secretary Sri S.Ramdas.

…Petitioner

and

The Commissioner of Endowments,
Government of A.P., Tilak Road, Adids,
Hyderabad, and others.

...Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.6181 of 1997

ORDER:

Sri Kalika Devi Tample Bhajana Mandali, Tandur, Ranga Reddy District, represented by its Secretary, filed the present Writ Petition praying for the issuance of Writ of Mandamus directing respondent Nos.1 to 3 to put 17 shops including the shops allotted to respondent Nos.4 to 19 by public auction as per Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties (other than Agricultural lands) lease Rules, 1982, (hereinafter in short referred to as "Rules" for the purpose of convenience) and fix the rents and to pass such suitable orders.

2) Sri N.Vasudeva Reddy, learned counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition, the respective stands taken in the counter affidavit filed by respondent Nos.1 and 2 and also the counter affidavit filed by respondent Nos.12 to 19. The learned counsel also would contend that the general rule is that leases of immovable properties of Hindu Religious Institutions and Endowments to be put by public auction, and allotments either by private negotiations or otherwise, even by competent authority, always would be an exception. The learned counsel also had referred to the relevant rules, and placed strong reliance on **Y.SATYANARAYANA V. DEPUTY COMM. ENDOWMENTS**[1].

3) The learned Assistant Government Pleader for Endowments had taken this Court through the counter filed by respondent Nos.1 and 2 and would maintain that in the facts and circumstances of the case, the Rules governing the field may have to be followed.

4) Sri Kondaveeti Ravi, learned counsel representing respondent No.3 would maintain that in the facts and circumstances, it would be just and proper to proceed with the public auction of the shops in question.

5) Sri Raghuveer Reddy, learned counsel representing respondent Nos.4 to 19 had taken this Court through the contents of the counter affidavit filed by them and also had explained under what circumstances, the agreement had been entered into. The learned counsel also would contend that in the light of the peculiar facts and circumstances, since the period granted by the Trust Board is presently subsisting till the expiry of the said period, no auction, much less the public auction, can be conducted and till then the rights of these parties to be protected.

6) Heard the counsel.

7) It is stated that the petitioner, Sri Kalika Devi Temple Bhajana Mandali (hereinafter in short referred to “Bhajana Mandali” for the purpose of convenience) was established in the year 1961 and the same was registered on 22-01-1991, and it is stated that they are interested in the affairs of the temple in question. It is also averred that the Bhajana Mandali had been managing the affairs of the temple till the same was taken over by the Endowments Department. It is also averred that the members of the Bhajana Mandali constructed the main Muktha Dwaram of Goddess Matha Kalika Devi with their contribution and also with the contributions made by the devotees, and thus, the Bhajana Mandali with the cooperation of devotees and important citizens of Tandur, developed the temple into a modern temple. Certain facts relating to the importance of this temple and other facts also had been averred.

8) Further, it is averred that while Bhajana Mandali handed over the management of the temple to Endowments Department with the fond hope that the temple will be managed effectively, contrary to their

expectations, the successive Trust Board Chairman committed several irregularities and mismanagement of the temple funds and acted detrimental to the interest of the temple. Certain allegations are made as against one Mallikarjun, the then Chairman of the Trust Board. But however, since he is not impleaded as a party to the said Writ Petition, the same need not be gone into. It is further stated that the petitioner filed Writ Petition No.11192 of 1991 praying for a direction to conduct a detailed enquiry into the irregularities and mismanagement of the then Chairman of the Trust Board. It is stated that the Writ Petition was admitted and interim direction had been granted. Thereafter, after hearing both sides, the order was modified directing respondent No.3 to go ahead with the proposed construction, but pending further orders, he shall not make any allotment of the shops either on lease basis or otherwise and it was further directed that the Inspector of Endowments Department, Vikarabad, to collect the rents and deposit the same with the Assistant Commissioner, and further, it was directed not to close the Pingili Dwaram of the temple.

9) Certain averments are made in para 7 of the affidavit filed in support of the Writ Petition alleging that the then Chairman colluded with the Endowments Department and allotted nearly 17 shops to respondent Nos.4 to 19 on certain nominal rents, instead of proceeding with the public auction, and it is stated that if the shops are put to public auction, it would fetch more rents. Further, Rule No.3 of the said Rules had been referred to, and hence, the relief specified supra had been prayed for.

10) In the counter affidavit filed by respondent Nos.1 and 2, it is averred in para 4 that the temple known as Sri Kalika Devi Temple is located in the heart of the city just adjacent to Sri Bhavgi Bhadreshwara Swamy Temple, Tandur, and the petitioner-Bhajana Mandali does not possess any immovable property except open space in front side of the temple

and the Institution was registered in the Book of Endowments and published under Section 6(c)(ii) of the Andhra Pradesh and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter in short referred to as “Act” for the purpose of convenience) and there are no hereditary trustees to this Institution, and the affairs of the temple had been managed by Self-Styled Committee some thirty years back, and the Self-Styled Committee developed the temple to some extent from time to time by raising donations from the public. As this was the case, in order to manage the affairs of the temple, the non-hereditary Trust Board as contemplated under Section 15(3) of the Act was constituted by the Assistant Commissioner, and after the expiry of the term of the Trust Board headed by Sri Korwar Mallikarjun as Chairman, a new Trust Board was constituted. The details had been furnished. Further, specific stand is taken that Bhajana Mandali is not recognized by the Endowments Department, inasmuch as, the Trust Board is being constituted for the temple.

11) Further, specific stand is taken that the Trust Boards constituted from time to time and the Endowments Department are taking much interest in the development of the temple and also in seeing that the daily rituals and the festivals are better performed. Further, specific stand is taken in para 10 of the counter affidavit that there were no sufficient funds for taking up the construction work of the shopping complex, the previous management decided to get the project of construction of shopping complex completed by entering into an agreement, alienating the open site belonging to the temple. In turn, the persons who had allotted open site had to provide funds for construction of shopping complex and enter into an agreement with the temple management. After the construction of the said shops, the respective persons who had to enter into an agreement and provide funds can occupy the respective shops constructed on open land for a period of three years on a monthly rent of

Rs.300/- per month. From the said amount, they can deduct Rs.100/- towards the refund of funds provided by the donors/tenants. In view of the said agreement, they had contributed more than Rs.3,00,000/- for constructing the shopping complex. In turn, after construction of the shops, the same were allotted to the following persons:

1. Sri M.D.Rahmat, s/o. M.D.Ahmed, r/o. Tandur
2. Sri Ayub Khan, s/o. Ali Khan, r/o. Tandur
3. Sri A. Gayatri Gupta, w/o. A.Anil Gupta, r/o. Tandur
4. Sri Mahadevi, w/o. Tukaramji, r/o. Tandur
5. Sri Mohammad Shareef, s/o. Mohammad Khaja, r/o Tandur
6. Smt Adivamma, w/o. K.Ramulu, r/o. Tandur
7. Sri Satish Kumar, s/o. Ramachander Rao, r/o.Tandur
8. Sri Krishna, s/o. Lakshman Achaalkar, r/o. Tandur
9. Sri N.Sreedhar, s/o. Venkatchary, r/o. Tandur
10. Sri Lokayat Ali Khan, s/o. Yousuf Ali Khan, r/o.Tandur
11. Sri Erram Krishna, s/o. Narsappa, r/o. Tandur town
12. Sri Palle Narasimhulu, s/o Nagappa, r/o. Tandur
13. Sri D.Gopalakrishna, s/o. Venkaiah, r/o. Tandur
14. Sri Mohammad Khaleed, s/o. Mohammad Ismail, r/o. Tandur
15. Sri B.Mallesham, s/o. G.Galaih, r/o. Tandur
16. Smt.G.Balamma,w/o. Galaiah, r/o. Tandur
17. Sri Dinesh, s/o. Ramaswamy, r/o. Tandur
18. Sri Kotla Ramachander, s/o. Keshappa, r/o.Tandur
19. Sri B.Ambadas, s/o. Ngoji, r/o. Tandur.

12) Further, it is averred that from the conditions of the agreement that the rent and the lease period fixed is only for three years and after the expiry of the lease period, fresh agreement has to be entered into as per the orders of the Commissioner, Endowments Department. Certain other facts relating to the shops of Sri Hanuman temple and also directions in

Writ Petition No.8550 of 1995 also had been referred to. Further, specific stand is taken that the same had been done in the interest of the Institution. Certain other factual details had been narrated relating to the constitution of the Trust Board and the other aspects in paras 11,12,13 and 14 of the counter affidavit.

13) In the counter affidavit filed by respondent No.5 to 19, it is stated that,

> "…In fact, said Temple was developed by the contributions made by various devotees. The Temple was registered in the Books of Endowments and published under Section 6(e)(ii) of the Act and a Non Hereditary Trust Board, as contemplated under Section 15(3) of the Act, was constituted by the Asst.Commissioner. Thereafter another Trust Board was constituted who took the oath of office on 27.09.1991 and a Chairman by name G.Krishna was elected on 08.10.1991. The petitioner has no right whatsoever as the third respondent Temple is registered with Endowment Department. The temple was not having any funds of its own and was unable to maintain itself. There was vacant land of the temple available, adjoining to the temple and as such the Temple Committee has decided to construct some shops by collecting the cost of construction from the intending lessees and after constructing the same, the shops were to be allotted to them and amounts contributed by the lessees were to be deducted by them @ Rs.150/- per month. These Respondents have agreed for the said proposal and have contributed an amount of Rs.32,000/- each in the year 1995 itself. From the year 1995 to 1997, as per the agreement, an amount of Rs.350/- was fixed as rent and out of this amount, these respondents were paying Rs.200/- p.m. by deducting Rs.150/- towards repayment of the amount contributed by them for the construction of the shops. I submit that all the shops were constructed with the money contributed by these respondents @ Rs.32,000/- each. The rents were being increased periodically. From Rs.350/-, it was enhanced to Rs.455/- and presently we are paying the rent @ Rs.590/- per month. The Asst.Commissioner, Endowments Department, Ranga Reddy District has also approved the enhancement of rent from time to time. I submit that since the Temple was not having any funds, these respondents had come forward and contributed the entire amount for constructing the shops and have been paying rents from the year 1995 onwards. Even as on date, after deducting the amount @ Rs.150/- per month, still substantial amount is there with the Temple towards the amount

contributed by these respondents. I submit that it is not the case where the temple property is being leased out without conducting auction. The facts of the case on hand are totally different. As such the averment made in the affidavit that official respondents have violated the rules with regard to Grant of Leases Rules, 1992, by not conducting public auction is not correct. I submit that the entire amount for construction of shops is contributed by these respondents and as per the agreement, leases were granted and are being renewed and presently the lease is renewed by an agreement dt.01.09.2001 and the same is valid upto 31.08.2004. The averment made in the affidavit that the management of the temple is handed over is incorrect. The other allegations made against the Chairman of the Trust Board are only for the purpose of filing the present writ petition and are not bonafide. In fact as there was no income for the temple, the Trust Board has decided to construct the shops so that the Temple will have regular income for its maintenance. Accordingly an offer was made and these respondents have contributed substantial amount of Rs.32000/- each for construction of small shops and ever since, these respondents are eking out their livelihood by doing the business in the said shops. The transaction is beneficial to the institution; as such, the decision of the Trust Board cannot be found fault with. The averment that neighbouring temple's shops are getting more income is incorrect. In any case, said temple is located in a busy locality and moreover the shops were constructed by the temple and not out of the contributions of the shop owners/lessees, as in the instant case. I submit that these respondents are paying the lease amounts regularly and are entitled to continue in possession as lessees till the amount of Rs.32000/- each paid by them for construction of shops is discharged fully. These respondents made the contribution with the hope of eking out their livelihood for considerable period and also to provide funds to the temple…"

14) The *locus standi* of the petitioner-Bajana Mandali to maintain the Writ Petition also had been questioned. But even in the light of the stand taken in the counter affidavit of respondent Nos.1 and 2, it is clear that prior to taking over by Endowments Department, some Self-Styled Committee had been operating and they had been looking after the management and improvement of the affairs of the temple and they had improved the temple by collections and donations etc. In the light of the

same, taking into consideration the facts of the present case, it cannot be said that the petitioner has no *locus standi* to maintain the present Writ Petition. Even in the counter affidavit filed by respondent Nos.1 and 2, they take a stand that after the expiry of the period of the agreement, the further allotment of shops are to be put by way of public auction. The learned Standing Counsel representing respondent No.3 had taken a stand that no counter affidavit as such was filed and that the shops in question are to be put in public auction only in accordance with Rules as already referred to supra.

15) Rule 3 of the Rules reads as hereunder:

> "3.(1) All leases or licences shall be made by way of public auction.
>
> Provided that the Commissioner may, on a request made in writing by the Executive Authority permit the lease of any property or right other wise than by way of public auction, if he is satisfied, for reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby. He may grant permission to such executive authority to grant a lease otherwise than by way of public auction.
>
> (2) The public auction shall be held at the place where the properties are situated or rights exists.
>
> Provided that the competent authority may, if he is satisfied that in case the holding of auction at a place other than the one in which the properties proposed to be leased or licensed are situated, will not be detrimental to secure a proper bid or will be held to secure a better bid or to whwart local collusion among the bidders, permit such auction but no auction shall be held, in a district other than the one in which the property is situated."

16) Rule 4 of the Rules reads as hereunder:

> "4. (1) In the case of immovable properties such as building and sites to be given or used for residential purposes only; leases shall be granted. In the case of other immovable properties such as shops, buildings, sites etc., to be given or used for the purposes of running business and such other rights of usufruct, fishery, collection of coconut prices, human hair etc., licences

shall be granted.

(2) (a) No lease of immovable property shall be granted for a period exceeding three (3) years.

(b) No license shall be granted for a period of three (3) years.

(c) (a) Where it is proposed to grant lease or licence for a period of (3) years the limits specified in Sub Rule 2 (a) & (b) the Executive Authority shall obtain the prior permission of the Commissioner before causing publication of the notice under Rule 6 of these rules duly submitting proposal to the Commissioner.

(b) (i) The Commissioner, on receipt of the proposal from the Executive Authority shall invite objections and suggestions for the proposed lease or license and the notice shall specify the date before which such objections and suggestions are to be received. The notice shall be published in the locality where the property is situated.

(ii) The Commissioner may after considering the objections and Suggestions if any received, accord permission for such a period not exceeding five (5) years with such terms and conditions as may be specified for the lease or license to be conducted in public auction.

(iii) The Government shall be the competent authority to grant permission for any lease or license for a period exceeding five (5) years by duly following the above procedure."

17) Rule 15 of the Rules reads as hereunder:

"Any lease or license granted, continued or allowed to be continued otherwise that in accordance with these rules shall be null and void.

Provided that any lease or license subsisting by the date of notification of these rules of any immovable property or right may be continued according to such terms and conditions and also on the rent payable there to, till the expiry of the period of the lease or license as may be decided upon by the Additional Commissioner on a proposal received from the Executive

Officer or Chairman or the Person-in-management as the case may be."

18) In **Y.Satyanarayana v. Deputy Comm. Endowments** (supra), the learned Judge of this Court while dealing with the Rules aforesaid and also provisions of Act 17 of 1966 and Act 30 of 1987 observed as under:

> "It is clear from a reading of the above rules that normally all leases of immovable properties belonging to a Hindu religious institution or endowment will have to be made by public auction. However, the competent authority may, on a request made by the executive authority, permit the lease otherwise than by public auction if the competent authority is satisfied for reasons to be recorded in writing that the interests of the institution or endowment will not suffer thereby. Admittedly in this case no such permission from the competent authority was obtained by Respondent No.3 for leasing out the shops to the petitioners herein. Rule 14(1) of the said rules lays down that all lease deeds shall be obtained in writing and shall be registered wherever so required by law. Rule 14(2) lays down that no person shall be allowed to exercise his rights under the lease until he has executed the lease deed. Though it is stated by the petitioners that they have executed lease deeds and that they are with the third respondent they are not produced. Rule 15 lays down that any lease granted otherwise than in accordance with these rules shall be null and void. I have, therefore, no hesitation in concluding that the alleged leases in favour of the petitioners, even if true are not valid. The counsel for the petitioner, however, contends that the said rules, which are issued in exercise of powers conferred by Section 107 read with Sub-section (1) of Section 74 of 1966 Act, are no longer in force as Act No.17 of 1966 has been repealed by the present Act 30 of 1987 and that under the present Act no rules are framed as yet in this behalf. But according to Sub-section (2)(a) of Section 155 of the present Act 30 of 1987, "Notwithstanding such repeal, all rules made, notifications or certificates issued, orders passed, decisions made, proceedings taken and other things done by any authority or officer under the repealed Acts shall in so far as they are not inconsistent with this Act be deemed to have been made, issued, passed, taken or done by the appropriate authority or officer under the corresponding provisions of this Act *and shall have effect accordingly until they are modified, cancelled or superseded under the provisions of this Act."* (emphasis supplied). It is, therefore, obvious that until new rules are framed under the present Act, the 1982 rules referred to above, still hold the field. The said contention of the learned

counsel for the petitioner is thus without any substance."

19) In the context of sale of land belonging to the Charitable Endowment by private negotiations instead of public auction, while deprecating the same, the Apex Court in **C.RAMI REDDY V. GOVT. OF A.P.**[2] observed as under:

> "We, therefore, direct that the lands in question may be sold by public auction in the following manner:-
>
> (1) Sale must be on the basis of "as-is-where-is-whatever-is" subject to the rights, if any, of any of the respondents and of the other occupants, if any, in regard to the claim for alleged tenancy, sub-tenancy, possession or of any other nature.
>
> (2) Wide publicity should be given to the date, time and place of public auction to ensure that maximum number of intending purchasers attend the auction in order to offer their bids.
>
> (3) The terms and conditions must inter alia provide for deposit of at lease 15% of the sale price in case within a week (or two weeks) which will be liable to be forfeited if the transaction is not completed.
>
> (4) Special notice shall be given to the appellants and the concerned respondents herein.
>
> (5) The appellants' offer made in this Court for purchase at the rate of Rs.2,50,000/- per acre on the condition specified in clause (4) herein will be treated as the minimum bid of the appellants and the sum of Rs.20,00,000/- deposited in this Court (which will be transmitted to the Commissioner, Endowments in due course), shall be treated as the deposit made by them in pursuance to clause (3) herein.
>
> (6) The other terms and conditions may be such as are usually incorporated in such public auctions by the Commissioner who shall specify them along with the above mentioned terms in the public notice."

20) Though this decision is concerned with sale, the principle is the same. There cannot be any doubt or controversy that the general rule is by public auction, and allotment by private negotiations always to be an exception. Under certain exceptional circumstances, if the statutory provision or the Rules governing the field, contemplate such allotment by

private negotiations by the competent authority, may be, the same may be resorted to.

21) In the present case, no doubt in the counter affidavit filed by respondent Nos.1 and 2, specific stand is taken that due to the financial position at the relevant point of time some agreement was entered into, the constructions were made. But the same stand cannot be taken at all times since subsequent thereto, much water had flown and there is sufficient lapse of time.

22) In view of the same, this Court is of the considered opinion that it would be just and proper that hereinafter, respondent Nos.1 to 3 to take further steps to put the shops in question by public auction in accordance with Rules referred to supra instead of resorting to any allotments by way of private negotiations.

23) In the light of the observations made above, the Writ Petitioner is bound to succeed, and accordingly, the Writ Petition is hereby allowed. But, however, in view of the respective stands taken in the counter affidavit of respondent Nos.1 and 2 and respondent Nos.5 to 19, the parties to bear their own costs.

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(P.S.NARAYANA, J)

19.12.2006
vv/bsb

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[1] 1996(1) ALD 941

[2] AIR 1986 SC 1158